

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL DOCKET NO. 1657

IN RE: VIOXX PRODUCTS LIABILITY LITIGATION

TO: VIA OVERNIGHT DELIVERY:
MICHAEL J. BECK, CLERK OF THE PANEL
ONE COLUMBUS CIRCLE N.E.
THURGOOD MARSHALL FEDERAL JUDICIARY BUILDING
ROOM G-255 NORTH LOBBY
WASHINGTON, D.C. 20002-8004

T. Rawdon Beaty v. Merck & Co., et al., M.D. Alabama,
C.A. No. 2:05-cv-880-T (formerly No. 2:05-cv-880-W)

NOTICE OF OPPOSITION TO CONDITIONAL TRANSFER ORDER

Plaintiff, by and through undersigned counsel, hereby files his Notice of Opposition to the Conditional Transfer Order (CTO-26) dated October 6, 2005 on the following grounds:

1. Jurisdiction and venue of this matter are proper in the Circuit Court of Barbour County, Alabama.
2. The Defendants' Notice of Removal is improper.
3. The Defendants' ground for removal, namely, that there was fraudulent joinder, is incorrect. All of the relief sought by the Plaintiff in his complaint is properly founded upon state law claims.

4. This case is not properly removable under 28 U.S.C. § 1441. No federal court has subject matter jurisdiction over this non-diversity case originally filed in the Circuit Court of Barbour County, Alabama.

5. Plaintiff has filed a Motion to Remand with supporting brief which is currently before the United States District Court for the Middle District of Alabama, Northern Division.

6. Transfer is inappropriate because federal subject matter jurisdiction does not exist.

7. Transfer is inappropriate because this case involves only Alabama state law claims.

8. Transfer is inappropriate because common issues do not predominate over individual issues of fact.

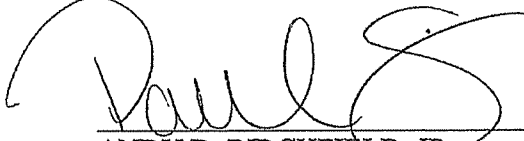
9. Transfer will not advance the just and efficient conduct of this case.

10. Transfer is inappropriate because this case is not sufficiently complex and time consuming.

11. Transfer of this case will not further the convenience of the parties and witnesses in this case.

12. Transfer to the MDL will place a great burden upon the Plaintiff and other parties and witnesses to this case.

Respectfully submitted this 13th day of October, 2005.


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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all counsel of record as listed below by placing a copy of same in the United States Mail, first class, postage prepaid on this the 13th day of October, 2005.


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